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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE, Plaintiff and Respondent, v. JEFFREY CHARLES WREN, Defendant and Appellant.	C059857 (Super. Ct. No. 62061847)

Defendant Jeffrey Charles Wren pled no contest to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) In exchange for his plea, an additional count, an allegation of a prior prison term, and allegations of two prior serious felony convictions were dismissed. Sentenced to two years in prison, concurrent with his sentence of 27 years to life in a separate case, defendant appeals. He contends the trial court erred in denying his motion to suppress evidence pursuant to Penal Code section 1538.5. We affirm.

BACKGROUND

At 12:23 a.m. on June 29, 2006, Officer Kevin Manzer was on patrol near the Barker Hotel in Roseville. He was patrolling

alone in his patrol police car. The area was one with a very high level of burglaries, including vehicle burglaries.

While driving slowly through the area, Manzer saw two men looking into the bed of a parked pick-up truck. The men were later identified as defendant and his uncle Ricky Wren. Manzer stopped his patrol car about one car length away from the truck, without blocking it. The area was dark so Manzer used his spotlight to illuminate the area. He did not activate his emergency lights or siren.

Manzer got out of his car. He intended to make casual contact to make sure it was their truck and they were not taking something from someone else's truck.

Manzer did not instruct defendant or his uncle to do anything or give them any orders, nor did he draw his service weapon. Instead, he asked, very casually, "Hey, is this your guys' truck?" Defendant said it was his.[1] Manzer then asked if either of them was on probation or parole, to which defendant responded that he was on probation. Manzer then asked defendant if he had anything illegal on him. Defendant said he did not. Manzer asked if he could search him and defendant said he could.[2]

As Manzer began the search, defendant put his hand into his pocket. Concerned that defendant may be retrieving a weapon,

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[1] Manzer said he likely asked a couple of casual conversational questions such as, "How are ya?" or about the weather first, as well as other casual questions interspersed throughout his contact with defendant.

[2] Manzer could not be sure if he asked whether defendant had anything illegal or whether he could search first.

Manzer instructed defendant to take his hand out of his pocket. As defendant removed his hand, he said he had a pipe and Manzer saw him holding a glass pipe of the kind used to smoke methamphetamine. Defendant was arrested. A baggie containing methamphetamine was found during a search incident to arrest.

Denying defendant's motion to suppress evidence, the trial court found: "Well, the bottom line is, I do not believe that asking if a person is on probation or parole, that in and of itself turns a consent contact into a detention. The officer is free to testify that there was no indication or manifestation of police authority or confinement or restriction or anything of that nature that would build up to a detention. So I think it's consensual."

DISCUSSION

Defendant contends, as he did below, that his consent was not valid because the encounter constituted an illegal detention. We disagree.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

"[C]onsensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.] [¶] The United States Supreme

Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street [or in a public place] and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821.)

Defendant argues that he was illegally detained when Manzer asked if he was on probation or parole. We disagree.

In *People v. Bennett* (1998) 68 Cal.App.4th 396, a police officer saw Bennett talking to a prostitute. The officer approached Bennett and asked whether he could talk to him for a

moment. Remembering Bennett was on parole from a previous contact, the officer asked if he was still on parole. When Bennett answered in the affirmative, the officer asked if he would be willing to wait in the patrol car while he ran a warrant check. Bennett agreed. (*Id.* at p. 399.) The tone of the conversation was calm and no physical force was used or threatened. (*Ibid.*) After discovering Bennett had violated parole, the officer arrested him. (*Ibid.*) Noting that the officer did not apply any physical or verbal force, the court found this to be a "classic consensual encounter" which did not implicate the Fourth Amendment. (*Id.* at pp. 402-403.)

Likewise, the circumstances surrounding the encounter here show that it was a consensual one, rather than a detention. There was a single officer involved in the encounter, and he did not display or use a weapon or make any show of force. He did not touch or restrain defendant or his uncle until after defendant admitted to being on probation and agreed to a search. He did not block defendant's path, chase after him, run at or yell at him, or command him to do anything. And the record indicates that he spoke to defendant in a conversational tone, rather than forceful or hostile manner. All of these factors show the encounter was not a detention, but a classic consensual encounter. (See *In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.)

Defendant contends the facts here are "strikingly close" to those in *People v. Garry* (2007) 156 Cal.App.4th 1100 (*Garry*), in which the court found the defendant had been unlawfully detained. We find *Garry* distinguishable.

In *Garry*, a uniformed police officer was patrolling in a "high-crime, high-drug area." (*Garry*, *supra*, 156 Cal.App.4th at p. 1103.) The officer saw Garry standing next to a parked car late at night and watched him for a few seconds. (*Id.* at pp. 1103-1104.) The officer then illuminated defendant with the spotlight on the patrol car, exited his vehicle, and "briskly" walked 35 feet in "two and a half, three seconds" directly to Garry while questioning him about whether he was on probation or parole, even though Garry had indicated that he was merely standing in front of his home. (*Id.* at p. 1104.) When Garry admitted we was on parole but denied possessing any weapons, the officer grabbed Garry, who started "to pull away 'violently,'" and put him on the ground. (*Id.* at p. 1104.) The officer handcuffed and arrested Garry and discovered cocaine in a search incident to arrest. (*Id.* at p. 1104.)

The court in *Garry* concluded that the officer's spotlighting of Garry, and the rapid approach in which the officer "all but ran directly at" Garry while questioning him about his legal status and disregarding Garry's explanation that he was merely standing in front of his house, were sufficiently "aggressive and intimidating actions" to communicate an "unmistakable 'tone,' albeit largely through non-verbal means, 'indicating that compliance with the officer's request might be compelled.' [Citation.]" (*Garry, supra,* 156 Cal.App.4th at pp. 1111-1112.)

In contrast to *Garry, supra,* 156 Cal.App.4th 1100, Manzer did not state that he spotlighted defendant, but rather that he illuminated the *area* with the spotlight because it was dark.

Moreover, the use of a spotlight alone does not constitute a detention. (*People v. Perez* (1989) 211 Cal.App.3d 1492, 1496 [use of spotlight may cause person to feel being object of scrutiny but does not amount to detention].) Manzer did not rush at defendant, but instead, parked his patrol car and walked over to where defendant and his uncle were standing. There was nothing particularly intimidating about Manzer's method of approaching defendant or his initial inquires. Thus, *Garry* is factually distinguishable from this case.

The fact that Manzer asked about defendant's probationary status did not convert the encounter into a detention. Mere police questioning does not amount to an involuntary detention, even if the questioning is regarding an individual's legal status. (*United States v. Drayton* (2002) 536 U.S. 194, 200-201 [153 L.Ed.2d 242, 251]; *People v. Bennett*, *supra*, 68 Cal.App.4th at pp. 401-402.) The same holds true for Manzer's inquiry of whether defendant had anything illegal in his possession or his request to search. (See *United States v. Drayton*, *supra*, 536 U.S. at pp. 200-201 [153 L.Ed.2d at p. 251]; see also *People v. Epperson* (1986) 187 Cal.App.3d 115, 120.) "It is not the nature of the question or request made by the authorities, but rather the manner or mode in which it is put to the citizen that guides us in determining whether compliance was voluntary or not." (*People v. Franklin* (1987) 192 Cal.App.3d 935, 941.) Here, there was nothing about the circumstances to convert the ordinary consensual encounter into an unlawful detention.

DISPOSITION

The judgment is affirmed.

SIMS, Acting P. J.

We concur:

RAYE, J.

CANTIL-SAKAUYE, J.